

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
SANDVIG LUMBER COMPANY, INC.,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 819

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the appeal of a \$100 civil penalty for an alleged
airborne particulate violation of respondent's Regulation I having come
before the Pollution Control Hearings Board on the 7th day of January,
1976 in Seattle, Washington, and appellant Sandvig Lumber Company, Inc.
not appearing, and respondent Puget Sound Air Pollution Control Agency
appearing through its attorney, Keith D. McGoffin with William A.
Harrison, hearing examiner presiding and Board member Walt Woodward
present at the hearing, and the Board having considered the exhibits,
records and files herein and having reviewed the Proposed Decision of

1 the presiding officer mailed to the parties on the 27th day of
2 January, 1976, and more than twenty days having elapsed from said
3 service; and

4 The Board having received no exceptions to said Proposed
5 Decision and the Board being fully advised in the premises; now
6 therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
8 Decision, together with Exhibit A, dated the 27th day of January, 1976,
9 and incorporated by this reference herein and attached hereto as Exhibit
10 B, are adopted and hereby entered as the Board's Final Findings of
11 Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 26th day of February, 1976.

13 POLLUTION CONTROL HEARINGS BOARD

14 Chris Smith
15 CHRIS SMITH, Chairman

16 W. A. Gissberg
17 W. A. GISSBERG, Member

18 Walt Woodward
19 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 26th day of February, 1976, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Jerome L. Sandvig, President
Sandvig Lumber Company, Inc.
9056 - 13th N.W.
Seattle, Washington 98117

Mr. Keith D. McGoffin
Burkey, Marsico, Roval, McGoffin,
Turner and Mason
818 South Yakima Avenue
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency
410 West Harrison Street
Seattle, Washington 98119

Larene Barlin
LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 3

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
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v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

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PROPOSED DECISION

This matter, the appeal of a \$100 civil penalty for an alleged airborne particulate violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, Member and William A. Harrison, Hearing Examiner) in the Seattle facility of the State Board of Industrial Insurance Appeals on January 7, 1976. Appellant did not appear, nor did it obtain either a postponement or a continuance of this hearing. Respondent appeared through its attorney, Keith D. McGoffin. Sherri Darkow, court reporter, recorded the proceedings.

EXHIBIT B

1 This matter had been previously set for hearing on September 4,
2 1975. On September 3, 1975, appellant made an oral request of the
3 Pollution Control Hearings Board for the postponement of the
4 September 4 hearing. This request was granted but the postponement
5 was not brought to the attention of either the respondent or those
6 members of the Pollution Control Hearings Board who were to preside
7 at the September 4 hearing. Consequently, on September 4 appellant
8 did not appear but respondent did appear and was allowed to present
9 evidence. From testimony heard and exhibits examined the Pollution
10 Control Hearings Board issued its Findings of Fact, Conclusions of Law
11 and Order on September 18, 1975. Appellant's written request for
12 postponement arrived at the offices of the Pollution Control Hearings
13 Board on September 4, 1975. On September 24, 1975, the Pollution
14 Control Hearings Board received appellant's written protest of the
15 Order of September 18 together with a request that that Order be
16 vacated and a new hearing granted in accordance with the postponement
17 of September 3. On September 25, 1975, the Pollution Control Hearings
18 Board issued its Order Reopening Hearing. Such new hearing was
19 scheduled for today.

20 Our WAC 371-08-165(3) states:

21 "Dismissal. If the moving party fails to appear
22 at the scheduled hearing and fails to obtain a
23 continuance or postponement as provided in this
24 section, the appeal shall be dismissed except to
prevent manifest injustice or unless such party
can show good cause for such failure "

25 Although the hearing on respondent's evidence on September 4 and
26 the subsequent Order of September 18 may have constituted error, we

27 PROPOSED DECISION

1 believe that such error was harmless to appellant because such evidence
2 could as well have been presented today.

3 ORDER

4 The Findings of Fact, Conclusions of Law and Order of September 18,
5 1975, incorporated by this reference herein and attached hereto as
6 Exhibit A, are hereby reinstated.

7 DONE this 27th day of January, 1976.

8 POLLUTION CONTROL HEARINGS BOARD

9 Walt Woodward
10 WALT WOODWARD, Member

11 William A. Harrison
12 WILLIAM A. HARRISON, Hearing Examiner

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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100 civil penalty for an alleged airborne particulate violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on September 4, 1975.

Appellant did not appear. Respondent appeared through Keith D. McGoffin. Eugene Barker, Olympia court reporter, recorded the proceedings.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were admitted.

2 From testimony heard and exhibits examined, the Pollution
3 Control Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Respondent, pursuant to Section 5, chapter 69, Laws of 1974,
7 3d Ex. Sess., has filed with this Board a certified copy of its
8 Regulation I containing respondent's regulations and amendments thereto.

9 II.

10 Section 9.04 of respondent's Regulation I makes it unlawful to
11 cause or allow the discharge of particulate matter which is deposited
12 on the real property of others. Section 3.29 authorizes respondent
13 to levy a civil penalty of not more than \$250 for any violation of
14 Regulation I.

15 III.

16 On February 21, 1975, wood chips from appellant's planer mill
17 at 13309 Mukilteo Speedway, Everett, Snohomish County, were deposited
18 on the nearby residential property of Grace Rule.

19 IV.

20 In connection with the above incident, respondent served on
21 appellant Notice of Violation No. 9896, citing Section 9.04, and
22 Notice of Civil Penalty No. 1953 in the sum of \$100, which is the
23 subject of this appeal.

24 V.

25 Any Conclusion of Law hereinafter stated which is deemed to be
26 a Finding of Fact is adopted herewith as same.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 From these facts, the Pollution Control Hearings Board
2 comes to these

3 CONCLUSIONS OF LAW

4 I.

5 Appellant was in violation of respondent's Regulation I
6 as cited in Notice of Violation No. 9896.

7 II.

8 Notice of Civil Penalty No. 1953 is reasonable.

9 III.

10 Any Finding of Fact herein which is deemed to be a Conclusion
11 of Law is adopted herewith as same.

12 Therefore, the Pollution Control Hearings Board issues this

13 ORDER

14 The appeal is denied and Notice of Civil Penalty No. 1953
15 is sustained in the amount of \$100.

16 DONE at Lacey, Washington this 18th day of September, 1975.

17 POLLUTION CONTROL HEARINGS BOARD

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19 CHRIS SMITH, Chairman

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22 WALT WOODWARD, Member

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26
27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER